

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE AT NASHVILLE

TENNESSEE PROFESSIONAL
ASSISTANCE PROGRAM,

Plaintiff,

v.

Case No. _____

CNA INSURANCE,

Defendant.

NOTICE OF REMOVAL

Defendant American Casualty Company of Reading, Pennsylvania (“ACCO”), incorrectly named as CNA INSURANCE, hereby removes the above-titled action to the United States District Court for the Middle District of Tennessee pursuant to 28 U.S.C. §§ 1441 and 1446. ACCO’s bases for removal are as follows:

1. ACCO is the only named defendant in the above-captioned case, in which Tennessee Professional Assistance Program (“TNPAP”) alleges it is entitled to insurance coverage based on liability for a suit involving Personal and Advertising Injury under policies of insurance issued by ACCO. The Complaint, captioned *Tennessee Professional Assistance Program v. ACCO Insurance*, is currently pending in the Sixth Circuit Court for Davidson County, Tennessee at Nashville (“TNPAP Complaint”).

REMOVAL IS TIMELY

2. Plaintiff Tennessee Professional Assistance Program served a copy of the TNPAP Complaint and the Summons, in the above-captioned case, by Certified Mail on ACCO Insurance via the Tennessee Department of Commerce and Insurance on February 14, 2013. ACCO Insurance is filing this Notice of Removal within thirty (30) days from the date that it received the Complaint and Summons, in accordance with 28 U.S.C. Sec. 1446(b).

PAPERS FROM THE REMOVED ACTION

3. A true and correct copy of the TNPAP Complaint and the Summons served on ACCO is attached hereto as Exhibit "A."

FACTS SUPPORTING REMOVAL FOR DIVERSITY OF CITIZENSHIP

4. In the TNPAP Complaint, Tennessee Professional Assistance Program maintains that it is a non-profit program of the Tennessee Nurses Foundation. Tennessee Nurses Foundation's principal place of business is at 545 Mainstream Drive, Ste. 405, Nashville, Tennessee 37228. Thus, Tennessee Professional Assistance Program is a citizen of Tennessee.

5. ACCO Insurance is incorporated in the State of Illinois and has its principal place of business in Chicago, Illinois. Accordingly, ACCO is a citizen of Illinois.

6. Because Tennessee Professional Assistance Program is a citizen of Tennessee, and ACCO is a citizen of Illinois, there is complete diversity of citizenship between TNPAP and ACCO.

Amount in controversy

7. Tennessee Professional Assistance Program asserts that ACCO has a duty, under the policy of insurance provide liability coverage for Personal and Advertising Injury to TNPAP in connection with an underlying lawsuit *Juliette Clifton v. Tennessee Professional Assistance Program and Centennial Medical Center*, Index No.: 09-C-4165 (“Clifton Action”) pending in the Sixth Circuit Court for Davidson County, Tennessee at Nashville. In the Clifton Action the claimant is seeking no less than \$1,000,000 for actual and compensatory damages for TNPAP’s actions in allegedly causing hardship to Juliette Clifton and her family by way of Breach of Contract, as well as causing direct harm to her reputation as a nurse. A true and correct copy of the Amended Complaint in the Clifton Action is attached hereto as Exhibit “B”.

8. In TNPAP’s Complaint, Tennessee Professional Assistance Program maintains that under the terms and provisions of the ACCO Insurance Policy number B 4012323527 (the “Policy”)¹, Tennessee Professional Assistance Program is entitled to liability coverage for Personal and Advertising Injury in the action filed against it by Juliet Clifton in the Sixth Circuit Court for Davidson County, Tennessee under docket number 09-C-4165. A true and correct copy of the Policy is attached hereto as Exhibit “C”. To this end, TNPAP is necessarily seeking indemnification for at least \$1,000,000, which is well in excess of the jurisdictional threshold of \$75,000, exclusive of interest and costs.

9. Although TNPAP’s Complaint does not include sufficient information to “intelligently ascertain removability” based solely on the Complaint, ACCO has met its burden of proving that there is a reasonable probability that TNPAP’s claim is in excess of \$75,000, exclusive of interest and costs. *See Blockbuster, Inc. v. Galeno*, 472 F.3d 53,

¹ ACCO’s policy number B 4012323527 has a per “occurrence” policy limit of \$1,000,000.

57 (2d Cir. 2006); *see also United Food & Commercial Workers Union v. CenterMark Properties Meriden Square, Inc.*, 30 F.3d 298, 303-04 (2d Cir. 1994). Moreover, because TNPAP's Complaint does not specify the amount of damages sought, the Court may look at ACCO's petition for removal to determine the amount in controversy. *Davenport v. Procter & Gamble*, 241 F.2d 551, 514 (2d Cir. 1957).

MISCELLANEOUS

10. Because this action is pending in the Sixth Circuit Court for Davidson County, Tennessee at Nashville, removal to the United States District Court for the Middle District of Tennessee is proper under 28 U.S.C. Sec. 1441.

11. A copy of the Complaint and Summons in the state court are filed contemporaneously with this Notice of Removal. ACCO will file with the clerk of this Court a copy of all remaining records and proceedings in the state court within twenty (20) days of the filing of the Notice of Removal.

12. Concurrent with the filing of this Notice of Removal, ACCO is filing a Notice of Removal with the Sixth Circuit Court for Davidson County, Tennessee at Nashville.

13. By the filing of this Notice of Removal, ACCO does not waive any defense that may be available to it, and ACCO reserves its right to supplement this Notice of Removal.

14. WHEREFORE, Defendant ACCO Insurance respectfully requests that the above-entitled action be removed from Sixth Circuit Court for Davidson County, Tennessee at Nashville to United States District Court for the Middle District of Tennessee and that all further proceedings in this action be held before this Court.

Dated: March ____, 2013.

WILLIAM G. COLVIN PLLC

BY: /s/ William G. Colvin, Esq.
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*Attorney for Defendant American Casualty
Company of Reading, Pennsylvania*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on counsel for all parties to this proceeding by first class mail, postage prepaid.

On this, the 18th day of March, 2013.

John W. Roberts, Esq.
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/s/ William G. Colvin, Esq.
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